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MS#303015.01 (5052)

REMARKS

Applicants have thoroughly considered the Office action dated October 31, 2006. Claims 1-50 are thus presented in the application for further examination. Reconsideration of the application in view of the following remarks is respectfully requested.

Response to Declaration under 37 CFR 1.131

The 37 CFR 1.131 declaration and exhibits submitted with the previous response were deemed insufficient by the Examiner to establish prior invention by Applicants. Applicants respectfully disagree, and assert that the submitted declaration and exhibits meet all the statutory requirements for establishing prior invention by the Applicants. Applicants believe that the additional evidence and clarification requested by the Examiner exceeds that which is required by the statute. Significantly, Applicants note that it is not the duty of the Patent Office to question the veracity of the evidence and facts provided, but rather to confirm that the provided evidence and facts meet the statutory requirements of 37 CFR 1.131. Applicants believe that the provided evidence and facts indeed met the statutory requirements of the statute.

For example, the Examiner states, "The Applicant has included a general and vague statement as to when the invention was reduced to practice. A mere statement declaring that the invention was conceived or reduced to practice by a specific date predating the applied prior art reference is insufficient to satisfy C.F.R. 1.131." Significantly, Applicants declaration swearing back of the cited reference, and the supporting evidence, constitute much more than a "mere statement." Applicants submitted an allegation that reduction to practice occurred prior to the effective date of the cited reference and accompanied that allegation with sufficient proof of the prior reduction to practice. Applicants were within the boundaries established by MPEP 715.07, a portion of which has been reproduced below for the Examiner's convenience.

When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if

the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date. (emphasis added).

To advance prosecution, however, Applicants submit herewith a supplemental declaration under 37 CFR 1.131 along with Exhibits A, B, C, D, and E as evidence of Applicants' prior invention. In particular, the evidence is sufficient to show a reduction to practice of the claimed invention in the United States before the effective date of the cited MusicMatch reference.

Exhibits A and E provide code written and executed before the effective date of the reference and the declaration cross-references lines of code to the claims. The supplemental declaration shows a clear relationship between the claims in the present application and the program code in the Exhibits. As explained in the declaration, each of the code listings was incorporated into a "build". Those skilled in the art are well aware that a "build" involves compiling and executing the code. In other words, not only did Applicants write the code, they compiled and ran the code. As such, the supplemental declaration and Exhibits clearly explain the facts and data Applicants are relying on to show that the invention as claimed was completed prior to the effective date of the MusicMatch reference.

Moreover, Exhibits B, C, and D illustrate that the software builds were successful and that the reduction to practice actually worked for its intended purpose. Therefore, the Office cannot reasonably assert that the evidence does not show a completion of the invention or show that the invention worked for its intended purpose.

Applicants submit that the supplemental declaration and associated exhibits meet all the statutory requirements for establishing prior invention by the Applicants. Therefore, the MusicMatch reference must be removed from consideration.

In the Office action dated October 31, 2006, the Examiner makes generalized references to purported deficiencies of the previously-submitted affidavit. Should the Examiner again deem the evidence to be ineffective to overcome the publication date of the cited MusicMatch reference, which we believe would be clearly baseless and erroneous, Applicants respectfully ask the Examiner to specifically identify any statutory requirements that have not been met and to provide specific guidance on how to rectify any purported

deficiencies. In this manner, prosecution of the present application may advance more expeditiously.

Claim Rejections Under 35 U.S.C. § 102(a)

Claims 1-3, 8, 10, 15-16, 27, 29, 36, and 38 stand rejected under 35 U.S.C. § 102(a) as being anticipated by NPL-MusicMatch, MusicMatch Jukebox Users Guide, Feb. 7, 2003, Chapters A1-A6 & 1-9 (the MusicMatch reference). Applicants respectfully submit that the MusicMatch reference fails to teach each and every element of the claims.

In any case, applicants submit herewith evidence (Exhibits A, B, C, D, and E) accompanying a supplemental declaration under 37 C.F.R. 1.131 that establishes applicants' prior invention. In particular, the evidence shows a reduction to practice of the claimed invention before the effective date of the MusicMatch reference. Therefore, this reference must be removed from consideration and claims 1-3, 8, 10, 15-16, 27, 29, 36, and 38 allowed.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 4-7, 9, 11-14, 22-24, 34-35, 37, 39, and 40-44 stand rejected under 35 U.S.C. § 103(a) by the MusicMatch reference in view of U.S. Patent No. 6,829,368 (Meyers). Applicants respectfully disagree.

In any case, with the MusicMatch reference removed from consideration, the Meyers reference fails to teach or suggest each and every aspect of the claimed invention. Applicants respectfully submit that claims 4-7, 9, 11-14, 22-24, 34-35, 37, 39, and 40-44 are in condition for allowance and respectfully request favorable reconsideration of this application.

Claims 17-28, 31-34, and 46-50 stand rejected under 35 U.S.C. § 103(a) by the Meyers reference in view of the MusicMatch reference. Applicants respectfully disagree.

In any case, with the MusicMatch reference removed from consideration, the Meyers reference fails to teach or suggest each and every aspect of the claimed invention. Applicants respectfully submit that claims 17-28, 31-34, and 46-50 are in condition for allowance and respectfully request favorable reconsideration of this application.

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CONCLUSION

In view of the foregoing, Applicants submit that independent claims 1, 17, 29, 39, and 45 are allowable over the cited art. Claims 2-16, 18-28, 30-38, 40-44, and 46-50 depend from these claims and are believed to be allowable for at least the same reasons as the independent claims from which they depend.

It is felt that a full and complete response has been made to the Office action and, as such, places the application in condition for allowance. Such allowance is hereby respectfully requested. Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited invention. The fact that Applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicants' agreement therewith.

The Applicants wish to expedite prosecution of this application. If the Examiner deems the application as amended to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss making an Examiner's amendment to place the application in condition for allowance.

The Commissioner is hereby authorized to charge \$120.00 for a one-month extension of time fee to Deposit Account No. 19-1345. The Commissioner is also authorized to charge any deficiency or overpayment of any required fee during the entire pendency of this application to Deposit Account No. 19-1345.

Respectfully submitted,



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JJB/cjl